

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA**

In re

**KURTIS L. BELLAMY,**

Debtor.

Case No. **14-60102-7**

**ORDER**

At Butte in said District this 21<sup>st</sup> day of March, 2014.

In this Chapter 7 bankruptcy, Debtor filed a Motion to Avoid Lien under 11 U.S.C. § 522(f) and Notice on March 3, 2014, seeking to avoid the Judicial Liens held by (i) West Law Firm, P.C., (ii) Altana Federal Credit Union and (iii) LVNV Funding, Assignee of Citibank against Debtor's homestead property. Debtor's instant motion was filed in accordance with Mont. LBR 4003-4, which provides:

A debtor shall move to avoid liens pursuant to 11 U.S.C. § 522(f)(1) by filing Mont. LBF 24.

In accordance with the above, Debtor's counsel utilized Mont. LBF 24, when he filed the aforementioned motion. Mont. LBF 24 includes a "NOTICE TO CREDITOR" provision which grants the affected creditor fourteen (14) days to respond to a debtor's request for lien avoidance and schedule the matter for hearing. The "NOTICE" provision attached to Debtor's motion provides that "[i]f no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be

granted.”

West Law Firm, P.C., Altana Federal Credit Union and LVNV Funding, Assignee of Citibank did not respond to Debtor's motion within the fourteen day time period. The Court deems West Law Firm, P.C., Altana Federal Credit Union and LVNV Funding, Assignee of Citibank's lack of response an admission by West Law Firm, P.C., Altana Federal Credit Union and LVNV Funding, Assignee of Citibank and/or their counsel that the averments set forth in Debtor's motion are well taken.

Debtor asserts in the motion that West Law Firm, P.C., Altana Federal Credit Union and LVNV Funding, Assignee of Citibank's judicial liens impair Debtor's homestead exemption. In support of such assertion, Debtor represents that the market value of the homestead property is \$165,000.00. Debtor also maintains that the homestead property is encumbered by a consensual secured obligation in the sum of \$159,315.00. The allowable homestead exemption on the date Debtor filed his bankruptcy petition was \$250,000.00 under Mont. Code Ann. § 70-32-104.

The avoidance of liens, in general, is governed by 11 U.S.C. § 522(f), which provides in relevant part:

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is-

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]

Utilizing the formula set forth in 11 U.S.C. § 522(f)(2)(A) and the uncontested facts asserted by Debtor in his motion, the Court finds that West Law Firm, P.C., Altana Federal Credit Union and LVNV Funding, Assignee of Citibank's judicial liens impair Debtor's homestead exemption.

Accordingly,

IT IS ORDERED Debtor's Motion to Avoid Lien under 11 U.S.C. § 522(f) filed March 3, 2014, is granted; and pursuant to 11 U.S.C. § 522(f)(1)(A), the judicial liens held by West Law Firm, P.C., Altana Federal Credit Union and LVNV Funding, Assignee of Citibank against the following property is hereby avoided to the extent allowed by law:

Lot 154, in Block 4 of Amended Plat of Lots 10-16, in Block 4, Lots 3 and 4 in Block 5, Lots 2-13, in Blocks 10 and 11, and Blocks 12 and 13, Hilltop Subdivision, in Billings, Yellowstone County, MT. Commonly known as 721 Garnet Ave, Billings MT.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER

U.S. Bankruptcy Judge

United States Bankruptcy Court

District of Montana